

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KAREEM HASSAN MILHOUSE	:	CIVIL ACTION
	:	
v.	:	
	:	
TROY LEVI, et al.	:	NO. 09-cv-5363-JF

MEMORANDUM

Fullam, Sr. J.

November 23, 2010

Plaintiff is a federal prisoner who has filed a *pro-se* Bivens action against officials at the Philadelphia Detention Center ("FDC"). Plaintiff has sued Defendants in both their official and individual capacities, claiming that Defendants violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment. Plaintiff alleges in his Amended Complaint that one day, while making rounds, Defendant Levi called him a vulgar name, then gave a verbal order to gas and shoot Plaintiff, upon which other employees allegedly gassed and shot Plaintiff. Plaintiff also alleges that he informed Defendant Gibbs about the incident, but that Mr. Gibbs failed to investigate.

Defendants have filed a motion to dismiss, or in the alternative, for summary judgment. Defendants argue that for the most part, Plaintiff has failed to exhaust his administrative remedies: Plaintiff never made a complaint against Defendant Gibbs, and as to Defendant Levi, Plaintiff only stated that

Defendant Levi yelled at him, not that he was physically assaulted on Defendant Levi's orders. Because the copies of Plaintiff's grievances establish that he never alleged he was physically assaulted and Plaintiff has not exhausted his administrative remedies as to Defendant Gibbs and the alleged physical assault, summary judgment will be granted on these claims.

As to Plaintiff's exhausted claim that Defendant Levi verbally harassed him, this allegation does not state an Eighth Amendment claim. See Frazier v. Daniels, No. 09-3612, 2010 WL 2040763, at *5 (E.D. Pa. May 20, 2010).

An order will be entered.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

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ORDER

AND NOW, this 23rd day of November 2010, upon consideration of the pending motions, and the responses thereto, IT IS ORDERED:

1. That Defendants' Motion to Dismiss, or in the Alternative, for Summary Judgment (Docket No. 19) is GRANTED. Summary judgment is GRANTED IN FAVOR OF Defendants TROY LEVI and JAMES GIBBS (misspelled "Gribbs" on the docket), and AGAINST Plaintiff KAREEM HASSAN MILHOUSE as to Plaintiff's unexhausted claims, as detailed in the accompanying memorandum.

2. That Plaintiff's exhausted claim, as detailed in the accompanying memorandum, is DISMISSED WITH PREJUDICE.

3. That Plaintiff's Motion to Compel Discovery (Docket No. 11) is DISMISSED AS MOOT.

4. That the Clerk is directed to mark the case-file CLOSED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

